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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,078	08/17/2006	Felix Henric Govert Ogg	US040130	9850

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BRIARCLIFF MANOR, NY 10510

EXAMINER

TECCO, ANDREW M

ART UNIT	PAPER NUMBER
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3764

MAIL DATE	DELIVERY MODE
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01/06/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/598,078	Applicant(s) OGG ET AL.	
	Examiner Andrew M. Tecco	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9,12-14 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) 8,10,11 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9,12-14 and 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> |

Continuation of Attachment(s) 6). Other: References: WO 2004072767 A2 and WO 3094148 A1.

DETAILED ACTION

1. The examiner acknowledges receipt of applicant's amendment and arguments filed on 24 September 2009. Claims 1-7, 9, 12-14, 16-20 are pending. Claims 8, 10-11, and 15 have been cancelled by the applicant. An action on the merits follows.

Claim Objections

2. **Claims 1, 14, and 20** are objected to because of the following informalities: In the claim language the applicant states, "an audio signal having a tempo that enables the user to increase, decrease or maintain the intensity..." in claim 1, and similar variants of this language in the other claims. The examiner contends that the audio signals do not "enable" the user to change or maintain intensity, but that they "encourage" a user to change or maintain intensity, as the audio signals do not appear to alter the user's inherent ability to perform such functions. The examiner suggests that the applicant change the "enables" to "encourages" in the claims referenced so as to properly reflect the nature of the invention. Appropriate correction is required.

3. **Claims 1, 14, and 20** are objected to because of the following informalities: The examiner notes that the applicant has claimed a plurality of audio signals having predetermined tempos, and then claims wherein the processing unit adjusts the tempo of the selected audio signal. The examiner would appreciate clarification if the applicant is stating that new signals are selected to "adjust" the initial audio signal, or if a single audio signal is selected and adjusted to encourage a certain exercise performance.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. **Claims 1-7, 9, 12, 14 and 16-20** are rejected under 35 U.S.C. 102(e) as being anticipated by **McKinney et al. (US Patent 7,518,054 B2)** hereinafter referred to as **McKinney**.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Regarding claim 1, McKinney discloses an audio pacing device, comprising:
a sensing unit (**132 or 134**) to obtain a parameter of a user in physical exercise (**col. 4 line 50 - col. 5 line 6; heart rate or running pace**);
a memory (**160**) to store a plurality of audio signals having predetermined tempo values (**col. 6 lines 5-17**); and

Art Unit: 3764

a processing unit (**104**) configured to (1) determine whether intensity of the parameter of the user should be increased, decreased or maintained by using the parameter of the user from the sensing unit and a predetermined reference value, (2) select an audio signal having a tempo that enables the user to increase, decrease or maintain the intensity, (3) adjust the tempo of a selected audio signal up to a predetermined percentage of the predetermined tempo value, and (4) determine the predetermined tempo values of the plurality of audio signals (**col. 5 line 37 – col. 6 line 36**),

wherein the plurality of audio signals are categorized based on their predetermined tempo values (**col. 6 lines 8-26**).

Regarding claim 2, McKinney discloses wherein the parameter is a pulse rate (**132**).

Regarding claim 3, McKinney discloses wherein the parameter is a step-speed rate (**134**).

Regarding claim 4, McKinney discloses wherein the tempo is a beat per minute value (**col. 7 lines 52-53**).

Regarding claim 5, McKinney discloses wherein the sensing unit is a heart rate monitor (**132**).

Regarding claim 6, McKinney discloses wherein the sensing unit is a step-speed measurement unit (**134**).

Regarding claim 7, McKinney discloses wherein the sensing unit and the processing unit are connected in a wired or wireless way (**fig. 1**).

Regarding claim 9, McKinney discloses wherein the predetermined reference value includes reference values selected by a user or a programmed exercise routine (**col. 5 line 22 – col. 6 line 26**).

Regarding claim 12, McKinney discloses wherein the audio signals are encoded in an MP3, WAV, MPEG-4, WMA, or AAC format (**col. 2 line 47; col. 6 line 26**).

Regarding claim 14, McKinney discloses an audio pacing method, comprising the steps of:

receiving a parameter of a user in physical exercise from a sensing unit (**132 or 134**);

determining whether intensity of the parameter of the user should be increased, decreased or maintained by using the parameter of the user from the sensing unit and a predetermined reference value (**col. 5 line 22 – col. 6 line 26**);

Art Unit: 3764

selecting an audio signal, from a plurality of audio signals that have predetermined tempo values, having a tempo that enables the user to increase, decrease or maintain the intensity, further comprising the step of adjusting the tempo of a selected audio signal up to a predetermined percentage of the tempo (**col. 5 line 66 – col. 6 line 26**);

determining, by an audio pacing device, the predetermined tempo values of the plurality of audio signals (**col. 5 line 66 – col. 6 line 37**); and

categorizing the plurality of audio signals based on their predetermined tempo values (**col. 6 lines 8-26**).

Regarding claim 16, McKinney discloses the step of a user selecting the said predetermined reference value from a group of reference values or a programmed exercise routine (**col. 5 line 22 – col. 6 line 26**).

Regarding claim 17, McKinney discloses wherein the audio signals are encoded in an MP3, WAV, MPEG-4, WMA, or AAC format (**col. 2 line 47; col. 6 line 26**).

Regarding claim 18, McKinney discloses wherein the parameter is a pulse rate or a step speed rate (**col. 4 line 50 - col. 5 line 6; heart rate or running pace**).

Regarding claim 19, McKinney discloses wherein the sensing unit is a heart rate monitor or a step-speed measurement unit (**132 or 134**).

Regarding claim 20, McKinney discloses an audio pacing device, comprising:

a sensing unit (**132 or 134**) to obtain a parameter that is representative of a status of a user in motion;

a memory (**160**) to store a plurality of audio signals having predetermined tempo values (**col. 6 lines 5-17**); and

a processing unit (**104**) configured to (1) determine whether the parameter should be increased, decreased or maintained by using the parameter from the sensing unit and a predetermined reference value, (2) select an audio signal having a tempo that enables the user to increase, decrease or maintain the parameter, (3) adjust the tempo of a selected audio signal up to a predetermined percentage of the predetermined tempo value, and (4) determine the predetermined tempo values of the plurality of audio signals (**col. 5 line 37 – col. 6 line 36**),

wherein the plurality of audio signals are categorized based on their predetermined tempo values (**col. 6 lines 8-26**).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. **Claim 13** is rejected under 35 U.S.C. 103(a) as being obvious over **McKinney et al. (US Patent 7,518,054 B2)** hereinafter referred to as **McKinney**.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(I)(1) and § 706.02(I)(2).

Regarding claim 13, McKinney discloses the audio pacing device in a first mode having a first sensing unit and a first parameter (**134; col. 4 lines 50-67**) and a second mode having second sensing unit and a second parameter (**132; col. 5 lines 3-21**), but does not disclose a switch to enable the use of either.

Art Unit: 3764

However, the examiner is taking official notice that it is common and well known in the art of electronic devices to have switches that allow a user to alternate between different modes of operation. Modifying McKinney with such a switch would have been obvious to one of ordinary skill in the art at the time the invention was made to so as to allow the user to take advantage of both of the embodiments described and alternate between keeping track of pace and heart rate.

9. **Claims 1, 3, 4, 6, 7, 9, 11, 12, 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Lee et al. (US Patent 6,837,827)** hereinafter referred to as **Lee** in view of **Kiiskinen et al. (PG Pub 2006/0112808 A1)** hereinafter referred to as **Kiiskinen** in view of **Lauffer et al. (US Patent 5,215,469)** hereinafter referred to as **Lauffer**.

Regarding claim 1, Lee discloses an audio pacing device (**10**), comprising:
a sensing unit (**40**) to obtain a parameter of a user in physical exercise;
a memory (**64**) to store a plurality of audio signals (**col. 9 lines 26-30**) having predetermined tempo values; and

a processing unit (**60**) configured to determine whether intensity of the parameter of the user should be increased, decreased or maintained by using the parameter of the user from the sensing unit and a predetermined reference value (**col. 9 lines 21-26**), and select an audio signal having a tempo that enables the user to increase, decrease or maintain the intensity (**col. 9 lines 26-50**), the processing unit being configured to

Art Unit: 3764

adjust the tempo of a selected audio signal up to a predetermined percentage of the predetermined tempo value (**col. 9 lines 51-66**).

Although the examiner considers Lee to disclose a plurality of audio tones and music stored on the device, Kiiskinen further teaches that it is known to have an interactive music playback device in which the audio signals are stored on a memory unit (**12; paragraph 45**). Kiiskinen further teaches a processing unit (**11**) configured to determine the predetermined tempo values of the plurality of audio signals, and wherein the plurality of audio signals are categorized based on their predetermined tempo values (**paragraph 46**).

Given the teachings of Kiiskinen (**paragraph 62**), it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the audio signal files of Lee stored on a memory. Doing so would allow the device to playback the sounds without relying on a separate device. Furthermore it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the tempo reading means and organizing of the audio signals by tempo of Kiiskinen into Lee. Doing so would allow the user to exercise to music at the appropriate rhythm of their routine.

Although the examiner considers Lee to disclose a the processing unit being configured to adjust the tempo of a selected audio signal up to a predetermined percentage of the predetermined tempo value, Lauffer further teaches that it is known to

Art Unit: 3764

have a processing unit (**100, 110**) configured to adjust the tempo of a selected audio signal up to a predetermined percentage of the predetermined tempo value (**figs. 3 and 4; col. 4 line 62 – col. 5 line 34**). In the example given, the tempo is increased 150% of the original.

Given the teachings of Lauffer, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the processor of Lee with the tempo control means of Lauffer. Doing so would allow the device to be programmed to achieve specific rates of tempo and better guide the user toward a specific pace.

Regarding claim 2, Lee fails to disclose wherein the parameter is a pulse rate.

However, Kiiskinen teaches an audio pacing device (**fig. 1**), that utilizes pulse rate as a target parameter (**paragraphs 51 and 62**).

Given the teachings of Kiiskinen, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a pulse rate as a parameter to be measured with the invention of Lee. Doing so would give the user a better idea of how hard their heart was working during exercise as is common and well known to do in the art.

Regarding claim 3, Lee discloses parameter is a step-speed rate (**col. 9 lines 33-41**).

Regarding claim 4, Lee discloses the tempo comprises a beat (**col. 9 lines 54-61**). Lee doesn't disclose the beat per minute values of such rhythms, but it is inherent to any beat/rhythm that it has a beat per minute value.

Although the examiner considers Lee to disclose an inherent beat per minute value, Kiiskinen further teaches the tempo of audio signals being measured in a beat per minute value (**paragraph 46**).

Given the teachings of Kiiskinen, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the audio signals in beats per minute value. Doing so would allow them to be more easily referenced and better organized in the memory.

Regarding claim 6, Lee discloses the sensing unit is a step-speed measurement unit (**col. 9 lines 33-41**).

Regarding claim 7, Lee discloses the sensing unit (**40**) and the processing unit (**60**) are connected in a wired or wireless way (**fig. 1; col. 6 line 57 – col. 7 line 12**).

Regarding claim 9, Lee discloses the predetermined reference value includes reference values selected by a user or a programmed exercise routine (**fig. 12; goal information; col. 9 line 51 – col. 10 line 7**).

Art Unit: 3764

Regarding claim 12, Lee discloses stored audio signals, but fails to disclose the format of the signals.

However, Kiiskinen teaches using an MP3 format to store audio signals **(paragraph 45 and 46)**.

Given the teachings of Kiiskinen, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the MP3 file format of Kiiskinen with the audio signals of Lee. Doing so would allow the device to hold a large number of audio signals in a relatively small amount of memory.

Regarding claim 14, Lee discloses an audio pacing method, comprising the steps of:

receiving a parameter of a user in physical exercise from a sensing unit **(40; col. 9 lines 38-41)**;

determining whether intensity of the parameter of the user should be increased, decreased or maintained by using the parameter of the user from the sensing unit and a predetermined reference value **(col. 9 lines 51-66)**;

selecting an audio signal having a tempo that enables the user to increase, decrease or maintain the intensity **(col. 9 lines 25-36 and 60-66)**, further comprising the step of adjusting the tempo of a selected audio signal up to a predetermined percentage of the tempo **(col. 9 lines 51-66)**.

Art Unit: 3764

Although the examiner considers Lee to disclose a plurality of audio signals that have predetermined tempo values, Kiiskinen further teaches that it is known to have a audio pacing method in which the audio signals have predetermined tempo values (**paragraph 46**). Kiiskinen further teaches determining, by an audio pacing device, the predetermined tempo values of the plurality of audio signals (**paragraph 46**); and categorizing the plurality of audio signals based on their predetermined tempo values (**paragraphs 45 and 46**).

Given the teachings of Kiiskinen (**paragraph 62**), it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the tempo reading means and organizing of the audio signals by tempo of Kiiskinen into Lee. Doing so would allow the user to exercise to music at the appropriate rhythm of their routine.

Although the examiner considers Lee to disclose a the processing unit being configured to adjust the tempo of a selected audio signal up to a predetermined percentage of the predetermined tempo value, Lauffer further teaches that it is known to have a processing unit (**100, 110**) configured to adjust the tempo of a selected audio signal up to a predetermined percentage of the predetermined tempo value (**figs. 3 and 4; col. 4 line 62 – col. 5 line 34**). In the example given, the tempo is increased 150% of the original.

Given the teachings of Lauffer, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the processor of Lee with the

Art Unit: 3764

tempo control means of Lauffer. Doing so would allow the device to be programmed to achieve specific rates of tempo and better guide the user toward a specific pace.

Regarding claim 16, Lee discloses the step of a user selecting the said predetermined reference value from a group of reference values or a programmed exercise routine (**col. 9 lines 21-26**).

Regarding claim 17, Lee discloses stored audio signals, but fails to disclose the format of the signals.

However, Kiiskinen teaches using an MP3 format to store audio signals (**paragraph 45 and 46**).

Given the teachings of Kiiskinen, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the MP3 file format of Kiiskinen with the audio signals of Lee. Doing so would allow the device to hold a large number of audio signals in a relatively small amount of memory.

Regarding claim 18, Lee discloses the parameter is a step speed rate (**col. 9 lines 33-41**).

Regarding claim 19, Lee discloses the sensing unit (**40**) a step-speed measurement unit (**col. 9 lines 33-41**).

Art Unit: 3764

Regarding claim 20, Lee discloses an audio pacing device, comprising:

a sensing unit **(40)** to obtain a parameter that is representative of a status of a user in motion;

a memory **(64)** to store a plurality of audio signals having predetermined tempo values; and

a processing unit **(60)** configured to determine whether the parameter should be increased, decreased or maintained by using the parameter from the sensing unit and a predetermined reference value, and select an audio signal having a tempo that enables the user to increase, decrease or maintain the parameter **(col. 9 lines 51-66)**, the processing unit being configured to adjust the tempo of a selected audio signal up to a predetermined percentage of the predetermined tempo value **(col. 9 lines 51-66)**.

Although the examiner considers Lee to disclose a plurality of audio tones and music stored on the device, Kiiskinen further teaches that it is known to have an interactive music playback device in which the audio signals are stored on a memory unit **(12; paragraph 45)**. Kiiskinen further teaches a processing unit **(11)** configured to determine the predetermined tempo values of the plurality of audio signals, and wherein the plurality of audio signals are categorized based on their predetermined tempo values **(paragraph 46)**.

Given the teachings of Kiiskinen **(paragraph 62)**, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the audio signal files of Lee stored on a memory. Doing so would allow the device to playback the

Art Unit: 3764

sounds without relying on a separate device. Furthermore it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the tempo reading means and organizing of the audio signals by tempo of Kiiskinen into Lee. Doing so would allow the user to exercise to music at the appropriate rhythm of their routine.

Although the examiner considers Lee to disclose a the processing unit being configured to adjust the tempo of a selected audio signal up to a predetermined percentage of the predetermined tempo value, Lauffer further teaches that it is known to have a processing unit (**100, 110**) configured to adjust the tempo of a selected audio signal up to a predetermined percentage of the predetermined tempo value (**figs. 3 and 4; col. 4 line 62 – col. 5 line 34**). In the example given, the tempo is increased 150% of the original.

Given the teachings of Lauffer, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the processor of Lee with the tempo control means of Lauffer. Doing so would allow the device to be programmed to achieve specific rates of tempo and better guide the user toward a specific pace.

10. **Claims 5 and 13** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Lee et al. (US Patent 6,837,827)** hereinafter referred to as **Lee** in view of **Kiiskinen et al. (PG Pub 2006/0112808 A1)** hereinafter referred to as **Kiiskinen** in view of **Lauffer et al. (US Patent 5,215,469)** hereinafter referred to as **Lauffer** in view

Art Unit: 3764

of **McHugh (US Patent 6,230,047 B1)** as taught by **Richardson et al. (US Patent 6,135,951)** hereinafter referred to as **Richardson**.

Regarding claim 5, Lee discloses an audio pacing device (**10**) with a first sensing unit (**40**) and a first parameter (**col. 9 lines 38-41**) and a switch (**fig. 2; #56**) to alternate between different modes of use (**col. 5 lines 29-38**).

Lee in view of Kiiskinen in view of Laufer doesn't disclose wherein the sensing unit is a heart rate monitor.

However, McHugh teaches another audio pacing device (**10**) with a different mode of operation having an alternate heart rate monitor sensing unit (**20**) and a pulse rate parameter (**Abstract; col. 5 line 61 – col. 6 line 6**).

Since Richardson teaches that during an exercise event a user would be concerned with speed pacing and heart rate (**col. 1 lines 8-30**), it therefore would have been obvious to one of ordinary skill in the art at the time the invention was made to include McHugh's sensing unit and parameter as an alternate / second mode in the device of Lee. Doing so would allow the user to be aware of their speed pacing as well as heart rate during an exercise routine.

Regarding claim 13, Lee discloses an audio pacing device (**10**) with a first sensing unit (**40**) and a first parameter (**col. 9 lines 38-41**) and a switch (**fig. 2; #56**) to alternate between different modes of use (**col. 5 lines 29-38**).

Art Unit: 3764

Lee in view of Kiiskinen doesn't disclose a second sensor as part of the alternate / second modes.

However, McHugh teaches another audio pacing device (**10**) with a different mode of operation having an alternate sensing unit (**20**) and parameter (**col. 5 line 61 – col. 6 line 6**).

Since Richardson teaches that during an exercise event a user would be concerned with speed pacing and heart rate (**col. 1 lines 8-30**), it therefore would have been obvious to one of ordinary skill in the art at the time the invention was made to include McHugh's sensing unit and parameter as an alternate / second mode in the device of Lee. Doing so would allow the user to be aware of their speed pacing as well as heart rate during an exercise routine.

Response to Arguments

11. Applicant's arguments with respect to claims 1-7, 9, 12-14, 16-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See Notice of References Cited.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 3764

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew M. Tecco whose telephone number is 571-270-3694. The examiner can normally be reached on 5/4/9; 8-5 M-R 1st Fri off, 2nd Fri 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3764

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew M Tecco/
Examiner, Art Unit 3764
2 January 2010

/Fenn C Mathew/
Primary Examiner, Art Unit 3764